

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY
08/10/2001

*** FILED ***
08/13/2001
CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-000044

STATE OF ARIZONA
v.
KENNY LEE DOMKE

ROGER KEVIN HAYS

TODD K COOLIDGE
MESA CITY COURT
REMAND DESK CR-CCC

MINUTE ENTRY
MESA CITY COURT
Cit. No. # 700467

Charge: 1. DRIVING UNDER THE INFLUENCE OF ALCOHOL
 2. BAC .10 OR GREATER WITHIN 2 HOURS OF DRIVING
 3. IMPROPER RIGHT HAD TURN

DOB: 02/10/66
DOC: 01 /08/00

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement since the time of oral argument and the Court has considered that argument, reviewed the record of the proceedings from the Mesa City Court, exhibits made of record and the Memoranda submitted by counsel.

On January 8, 2000, Appellant was arrested in the City of Mesa and charged with Driving While Under the Influence of Intoxicating Liquor, a class 1 misdemeanor in violation of A.R.S. 28-1381(A)(1), Driving with a Blood Alcohol Content Greater than .10 Within 2 hours of Driving, a class 1 misdemeanor in violation of A.R.S. Section 28-1381(A)(2), and an Improper Right Hand Turn, a civil traffic offense in violation of A.R.S. Section 28-751.1. Prior to trial Appellant filed a Motion to Suppress all evidence which was the fruit of an alleged unreasonable stop, Appellant claimed the police did not have a reasonable suspicion to stop his vehicle. The trial court conducted an evidentiary hearing on September 7, 2000. In a written opinion dated September 19, 2000, the trial judge denied Appellant's Motion to Suppress. The case proceeded to a jury trial and Appellant was convicted on January 2, 2001. Sentencing occurred that same date and Appellant was ordered to obtain a vehicle ignition interlock device and install it before his driver's license was reinstated, to pay a fine of \$500.00, to serve 90-days in the

Maricopa County Jail and 60-days were suspended completion of alcohol/drug screening, education and treatment programs. A timely Notice of Appeal was filed by Appellant in this case.

Appellant claims that the trial court erred in failing to suppress all evidence gathered after an unreasonable stop of Appellant. Appellant claims that the Mesa Police Officers did not have a “reasonable suspicion” which would justify the stop of Appellant’s vehicle. An investigative stop is lawful if the police officer is able to articulate specific facts which, when considered with rational inferences from those facts, reasonably warrant the police officer’s suspicion that the accused had committed, or was about to commit, a crime.¹ These facts and inferences when considered as a whole the (“totality of the circumstances”) must provide “a particularized and objective basis for suspecting the particular person stopped of criminal activity.”² A.R.S. Section 13-3883(B) also provides in pertinent part authority for police officers to conduct a “investigative detention”:

A peace officer may stop and detain a person as is reasonably necessary to investigate an actual or suspected violation of any traffic law committed in the officer’s presence and may serve a copy of the traffic complaint for any alleged civil or criminal traffic violation.

A temporary detention of an accused during the stop of an automobile by the police constitutes a “seizure” of “persons” within the meaning of the Fourth Amendment even if the detention is only for a brief period of time.³ In Whren⁴ the United States Supreme Court upheld the District’s Court denial of the Defendant’s Motion to Suppress finding that the arresting officers had probable cause to believe that a traffic violation had occurred, thus the investigative detention of the Defendant was warranted. In that case, the police officers admitted that they used the traffic violations as a pretext to search the vehicle for evidence of drugs. The Court rejected the Defendant’s claim that the traffic violation arrest was a mere pretext for a narcotic search, and stated that the reasonableness of the traffic stop did not depend upon the actual motivations of the arresting police officers. Probable cause to believe that an accused has violated a traffic code renders the resulting traffic stop reasonable under the Fourth Amendment.⁵

The sufficiency of the legal basis to justify an investigative detention is a mixed question of law and fact.⁶ An Appellate court must give deference to the trial court’s factual findings, including findings regarding the witnesses’ credibility and the reasonableness of inferences drawn by the officer.⁷ This Court must review those factual

¹ *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed. 2d 889 (1968); *State v. Magner*, 191 Ariz. 392, 956 P.2d 519 (App. 1998); *Pharo v. Tucson City Court*, 167 Ariz. 571, 810 P.2d 569 (App. 1990).

² *United States v. Cortez*, 449 U.S. 411, 417-18, 101 S.Ct. 690, 695, 66 L.Ed.2d 621, (1981).

³ *Whren v. United States*, 517 U.S. 806, 809-810, 116 S.Ct. 1769, 135 L.Ed.2d 89(1996).

⁴ *Id.*

⁵ *Id.*

⁶ *State v. Gonzalez-Gutierrez*, 187 Ariz. 116, 118, 927 P.2d 776, 778 (1996); *State v. Magner*, *Supra*.

⁷ *Id.*

findings for an abuse of discretion.⁸ Only when a trial court's factual finding, or inference drawn from the finding, is not justified or is clearly against reason and the evidence, will an abuse of discretion be established.⁹ This Court must review *de novo* the ultimate question whether the totality of the circumstances amounted to the requisite reasonable suspicion.¹⁰

In this case the trial judge entered a detailed order denying Appellant's Motion to Suppress. The trial judge stated at page 3:

For the foregoing reasons, the Court finds the officer has articulated specific, reasonable, objective facts of an actual or suspected civil traffic violation to justify an investigative stop of Defendant's vehicle. The Defendant's Motion to Suppress/Dismiss is denied.¹¹

In its summary of the facts the trial court found that Appellant, while making a right hand turn onto Main Street, failed to move as close as practicable to the right hand curb or edge of the roadway. Instead, Appellant moved into the median lane of Main Street after making his turn. Clearly, testimony was presented to the trial court that would justify a belief that Appellant had committed a traffic violation (A.R.S. Section 28-751.1).

Having determined that a factual basis exists to support the trial court's ruling, this Court also determines *de novo* that said facts do establish a reasonable basis for the Mesa Police Officers to have stopped the automobile driven by the Appellant.

IT IS THEREFORE ORDERED sustaining the judgments of guilt and sentences imposed by the Mesa City Court.

IT IS FURTHER ORDERED remanding this matter back to the Mesa City Court for all future proceedings.

⁸ *State v. Rogers*, 186 Ariz. 508, 510, 924 P.2d 1027, 1029 (1996).

⁹ *State v. Chapple*, 135 Ariz. 281, 297, 660 P.2d 1208, 1224 (1983); *State v. Magner*, 191 Ariz. at 397, 956 P.2d at 524.

¹⁰ *State v. Gonzalez-Gutierrez*, 187 Ariz. at 118, 927 P.2d at 778; *State v. Magner*, 191 Ariz. at 397, 956 P.2d at 524.

¹¹ Order denying Defendant's Motion to Suppress/Dismiss, filed January 24, 2001.